

AMENDED IN SENATE JUNE 20, 2016

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1317

Introduced by Assembly Member Salas

(Principal coauthor: Assembly Member Roger Hernández)

**(Coauthors: Assembly Members Alejo, Calderon, Dodd, Frazier,
Gomez, Gonzalez, McCarty, Rodriguez, and Weber)**

**(Coauthors: Senators Anderson, Beall, Cannella, Galgiani, Hall, Hueso,
Lara, Mendoza, and Vidak)**

February 27, 2015

An act to amend Section 2699.3 of the Labor Code, relating to employment, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1317, as amended, Salas. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes an aggrieved employee to bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act provides the employer with the right to cure certain violations before the employee may bring

a civil action, as specified. For other violations, the act requires the employee to follow specified procedures before bringing an action.

This bill would provide the employer with the right to cure any violation of the Labor Code covered by the act before the employee may bring a civil action. That right to cure would be provided before, and in addition to, any other specified procedures the employee is required to follow prior to bringing an action.

Existing law establishes the Department of Industrial Relations within the agency and sets forth its powers and duties, including, but not limited to, fostering, promoting, and developing the welfare of wage earnings.

This bill would appropriate \$1,400,000 to the department for deposit into the Labor and Workforce Development Fund for the purpose of establishing 9 new positions to review and investigate private attorneys general cases under the act.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2699.3 of the Labor Code is amended to
2 read:

3 2699.3. (a) A civil action by an aggrieved employee pursuant
4 to subdivision (a) or (f) of Section 2699 alleging a violation of any
5 provision listed in Section 2699.5 shall commence only after the
6 following requirements have been met:

7 (1) (A) The aggrieved employee or representative shall give
8 written notice by certified mail to the Labor and Workforce
9 Development Agency and the employer of the specific provisions
10 of this code alleged to have been violated, including the facts and
11 theories to support the alleged violation.

12 (B) The employer may cure the alleged violation according to
13 the procedures described in paragraph (2) of subdivision (c). If the
14 alleged violation is not cured within the 33-day period prescribed
15 in paragraph (2) of subdivision (c), in lieu of commencing a civil
16 action, the employee or representative shall notify by certified mail
17 the Labor and Workforce Development Agency and the employer
18 of the failure to cure or, if the employee disputes that the alleged
19 violation has been cured, the employee or representative shall
20 provide notice pursuant to the procedures of subparagraph (A) of
21 paragraph (3) of subdivision (c).

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 30 calendar days of the postmark date of the notice received pursuant to subparagraph (B) of paragraph (1). Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice given pursuant to subparagraph (B) of paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to subparagraph (B) of paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee or representative of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within ~~that~~ *the* 158-day period prescribed by this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give notice by certified mail to the Division of Occupational Safety and Health and the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(B) The employer may cure the alleged violation according to the procedures described in paragraph (2) of subdivision (c). If the alleged violation is not cured within the 33-day period prescribed

1 in paragraph (2) of subdivision (c), in lieu of commencing a civil
2 action, the employee or representative shall notify by certified mail
3 the Division of Occupational Safety and Health and the employer,
4 with a copy to the Labor and Workforce Development Agency, of
5 the failure to cure or, if the employee disputes that the alleged
6 violation has been cured, the employee or representative shall
7 provide notice pursuant to the procedures of subparagraph (A) of
8 paragraph (3) of subdivision (c).

9 (2) (A) The division shall inspect or investigate the alleged
10 violation pursuant to the procedures specified in Division 5
11 (commencing with Section 6300).

12 (i) If the division issues a citation, the employee may not
13 commence an action pursuant to Section 2699. The division shall
14 notify the aggrieved employee or representative and employer in
15 writing within 14 calendar days of certifying that the employer
16 has corrected the violation.

17 (ii) If by the end of the period for inspection or investigation
18 provided for in Section 6317, the division fails to issue a citation
19 and the aggrieved employee disputes that decision, the employee
20 may challenge that decision in the superior court. In such an action,
21 the superior court shall follow precedents of the Occupational
22 Safety and Health Appeals Board. If the court finds that the division
23 should have issued a citation and orders the division to issue a
24 citation, then the aggrieved employee may not commence a civil
25 action pursuant to Section 2699.

26 (iii) A complaint in superior court alleging a violation of
27 Division 5 (commencing with Section 6300) other than those listed
28 in Section 2699.5 shall include therewith a copy of the notices
29 provided to the division and employer pursuant to subparagraphs
30 (A) and (B) of paragraph (1).

31 (iv) The superior court shall not dismiss the action for
32 nonmaterial differences in facts or theories between those contained
33 in the notices provided to the division and employer pursuant to
34 subparagraphs (A) and (B) of paragraph (1) and the complaint
35 filed with the court.

36 (B) If the division fails to inspect or investigate the alleged
37 violation as provided by Section 6309, the aggrieved employee
38 may commence a civil action pursuant to Section 2699.

39 (3) (A) Nothing in this subdivision shall be construed to alter
40 the authority of the division to permit long-term abatement periods

1 or to enter into memoranda of understanding or joint agreements
2 with employers in the case of long-term abatement issues.

3 (B) Nothing in this subdivision shall be construed to authorize
4 an employee to file a notice or to commence a civil action pursuant
5 to Section 2699 during the period that an employer has voluntarily
6 entered into consultation with the division to ameliorate a condition
7 in that particular worksite.

8 (C) An employer who has been provided notice pursuant to this
9 section may not then enter into consultation with the division in
10 order to avoid an action under this section.

11 (4) The superior court shall review and approve any proposed
12 settlement of alleged violations of the provisions of Division 5
13 (commencing with Section 6300) to ensure that the settlement
14 provisions are at least as effective as the protections or remedies
15 provided by state and federal law or regulation for the alleged
16 violation. The provisions of the settlement relating to health and
17 safety laws shall be submitted to the division at the same time that
18 they are submitted to the court. This requirement shall be construed
19 to authorize and permit the division to comment on those settlement
20 provisions, and the court shall grant the division's commentary
21 the appropriate weight.

22 (c) A civil action by an aggrieved employee pursuant to
23 subdivision (a) or (f) of Section 2699 alleging a violation of any
24 provision other than those listed in Section 2699.5 or Division 5
25 (commencing with Section 6300) shall commence only after the
26 following requirements have been met:

27 (1) The aggrieved employee or representative shall give written
28 notice by certified mail to the Labor and Workforce Development
29 Agency and the employer of the specific provisions of this code
30 alleged to have been violated, including the facts and theories to
31 support the alleged violation.

32 (2) (A) The employer may cure the alleged violation within 33
33 calendar days of the postmark date of the notice. The employer
34 shall give written notice by certified mail within that period of
35 time to the aggrieved employee or representative and the agency
36 if the alleged violation is cured, including a description of actions
37 taken, and no civil action pursuant to Section 2699 may commence.
38 If the alleged violation is not cured within the 33-day period, the
39 employee may commence a civil action pursuant to Section 2699.

1 (B) (i) Subject to the limitation in clause (ii), no employer may
2 avail himself or herself of the notice and cure provisions of this
3 subdivision more than three times in a 12-month period for the
4 same violation or violations contained in the notice, regardless of
5 the location of the worksite.

6 (ii) No employer may avail himself or herself of the notice and
7 cure provisions of this subdivision with respect to alleged violations
8 of paragraph (6) or (8) of subdivision (a) of Section 226 more than
9 once in a 12-month period for the same violation or violations
10 contained in the notice, regardless of the location of the worksite.

11 (3) (A) If the aggrieved employee disputes that the alleged
12 violation has been cured, the aggrieved employee or representative
13 shall provide written notice by certified mail, including specified
14 grounds to support that dispute, to the employer and the agency.

15 (B) Within 17 calendar days of the postmark date of that notice,
16 the agency shall review the actions taken by the employer to cure
17 the alleged violation, and provide written notice of its decision by
18 certified mail to the aggrieved employee or representative and the
19 employer. The agency may grant the employer three additional
20 business days to cure the alleged violation. If the agency determines
21 that the alleged violation has not been cured or if the agency fails
22 to provide timely or any notification, the employee may proceed
23 with the civil action pursuant to Section 2699. If the agency
24 determines that the alleged violation has been cured, but the
25 employee still disagrees, the employee may appeal that
26 determination to the superior court.

27 (d) The periods specified in this section are not counted as part
28 of the time limited for the commencement of the civil action to
29 recover penalties under this part.

30 SEC. 2. The sum of one million four hundred thousand dollars
31 (\$1,400,000) is hereby appropriated from the General Fund to the
32 Department of Industrial Relations for deposit into the Labor and
33 Workforce Development Fund for the purpose of establishing nine
34 new positions at the Department of Industrial Relations to review
35 and investigate cases under the Labor Code Private Attorneys
36 General Act of 2004.